

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5309 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PRAMUKH STEEL PVT LTD.

Versus

BIL GRAM PANCHAYAT

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Appearance:

MR RN SHAH for Petitioner

MR ARUN H MEHTA for Respondent No. 1

MR SA PANDYA, AGP for Respondent No. 2 & 3

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 15/09/1999

ORAL JUDGEMENT

Rule, service of which is waived by learned advocate Mr Arun H. Mehta for respondent No.1 and learned AGP Mr S.A.Pandya for respondent Nos.2 & 3.

In this petition under Article 226 of the Constitution of India, the petitioner Company seeks exemption from the

payment of octroi, inter alia, challenging the order of respondent No.1 Panchayat, dated 19.5.98, as at Annexure N, whereby, the application for exemption came to be rejected by a unanimous resolution, on the ground that it is violative of the provisions of Rule 36(2) and (4) of the Gujarat Gram & Nagar Panchayats (Taxes & Fees) Rules, 1964 (Rules).

After having heard the learned advocates appearing for the parties and considering the factual scenario emerging from the record of the present case, it leaves no manner of doubt that the impugned decision of the respondent Panchayat is vulnerable as it has decided the exemption application made by the petitioner Company without, correctly, , interpreting the provisions of rule 36(2) and (4) of the Rules. The directions contained in the earlier order passed by this Court in Special Civil Application No.2930 of 1998, in all probabilities, are also not properly appreciated by the respondent No.1 Panchayat. Therefore, in the opinion of this Court, the impugned order is required to be quashed.

It would lead to the examination as to what next ? Obviously, entitlement for exemption from payment of octroi duty is founded upon rule 36 of the Rules. Exemption under sub-rule (2) of rule 36 shall be available to a new industry upon occurrence or happening of certain events of facts, which, obviously, are required to be examined and investigated by the competent authority, namely, the respondent No.1 Panchayat. Therefore, this task or the process has to be left to the respondent No.1 Panchayat. Consequently, the impugned order is quashed and set aside. The respondent No.1 Panchayat is, therefore, directed to reconsider the application for exemption from octroi made by the petitioner company in the light of the provisions of sub-rule (2) of rule 36 read with sub-rule (4) of rule 36 of the Rules and the facts and the documents submitted by the petitioner and that may be submitted in this connection by the petitioner and after giving an opportunity of hearing to the petitioner, within a period of one month from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

Office is directed to transmit the writ of this court immediately.

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